

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs October 13, 2004

**REGINOL L. WATERS v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Davidson County**  
**No. 2000-C-1267 J. Randall Wyatt, Jr., Judge**

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**No. M2003-01870-CCA-R3-CO - February 11, 2005**

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The petitioner, Reginol L. Waters, appeals the trial court's summary dismissal of his request for post-conviction DNA analysis. See Tenn. Code Ann. §§ 40-30-301 through 40-30-313. The judgment of the trial court is affirmed.

**Tenn. R. App. P. 3; Judgment of the Trial Court Affirmed**

GARY R. WADE, P.J., delivered the opinion of the court, in which DAVID H. WELLES and JOHN EVERETT WILLIAMS, JJ., joined.

Reginol L. Waters, Whiteville, Tennessee, pro se.

Paul G. Summers, Attorney General & Reporter; Michael Markham, Assistant Attorney General; and Brian Holmgren, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

The petitioner was convicted by a Davidson County jury of two counts of aggravated rape, one count of aggravated robbery, and one count of aggravated burglary. The proof at trial demonstrated that on April 24, 2000, the petitioner broke into the victim's residence, forced the victim to perform oral sex at knifepoint, and took the victim's debit card, including the PIN. The trial court ordered sentences of twenty-three years for the first rape, twenty-five years for the second rape, and ten years each for the aggravated robbery and aggravated burglary. Because the trial court ordered consecutive service of the two aggravated rape convictions and the aggravated burglary conviction, the effective sentence was fifty-eight years. This court affirmed the convictions and sentences on direct appeal. State v. Reginol L. Waters, No. M2001-02682-CCA-R3-CD (Tenn. Crim. App., at Nashville, Jan. 30, 2003). Our supreme court denied application for permission to appeal on June 2, 2003.

While his direct appeal was still pending, the petitioner filed a petition pursuant to Tennessee Code Annotated section 40-30-403 seeking forensic analysis of DNA evidence. The post-conviction

court initially dismissed the petition on the grounds that it could not be pursued during the pendency of the direct appeal. This court, however, reversed and remand, determining that there was no such procedural barrier to the petition. Reginol L. Waters v. State of Tennessee, No. M2002-01712-CCA-R3-CO (Tenn. Crim. App., at Nashville, Mar. 14, 2003). Upon remand, the post-conviction court, concluding that the petitioner could not satisfy the requirements of the statute, again determined that the petition should be summarily dismissed. This appeal followed.

The Post-Conviction DNA Analysis Act of 2001 provides as follows:

[A] person convicted of and sentenced for the commission of first degree murder, second degree murder, aggravated rape, rape, aggravated sexual battery or rape of a child, the attempted commission of any of these offenses, any lesser included offense of these offenses, or, at the discretion of the trial judge, any other offense, may at any time, file a petition requesting the forensic DNA analysis of any evidence that is in the possession or control of the prosecution, law enforcement, laboratory, or court, and that is related to the investigation or prosecution that resulted in the judgment of conviction and that may contain biological evidence.

Tenn. Code Ann. § 40-30-303. There is no statute of limitation. Id. By the terms of the Act, trial courts, after affording the prosecution the opportunity to respond to a petition seeking relief, are obligated to order DNA analysis when the petitioner satisfies the following conditions:

- (1) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis;
- (2) [t]he evidence is still in existence and in such a condition that DNA analysis may be conducted;
- (3) [t]he evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and
- (4) [t]he application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

Tenn. Code Ann. § 40-30-304. Although our statute does not explicitly require that the petitioner show that identity was an issue, similar statutes in other states do. See, e.g., 725 Ill. Comp. Stat. Ann. 5/116-3(b)(1) (“The defendant must present a prima facie case that . . . identity was the issue in the trial[.]”); Tex. Code Crim. Pro. art. 64.03(a)(1)(B) (“A convicting court may order forensic DNA testing under this chapter only if the court finds that . . . identity was or is an issue in the case[.]”). Further, Tennessee Code Annotated section 40-30-305 provides that if DNA analysis would have produced a more favorable verdict or a more favorable sentence, trial courts “may” order DNA analysis when the petitioner satisfies the same conditions.

After hearing argument on the petition, the post-conviction court, in a written order, ruled as follows:

The [c]ourt finds that the petitioner cannot meet all of the criteria set forth in Tennessee Code Annotated § 40-30-404. Specifically, the [s]tate contends that there is not a biological specimen in existence that would lend itself to analysis. The [c]ourt recalls from its notes from the trial and agrees with the [s]tate that there is not a sufficient sample in existence to test. Dr. Kadrea Pillow testified for the [s]tate during the trial that she tried to conduct a DNA analysis on sperm heads found in the victim's mouth. However, the analysis showed the victim's DNA profile and she was of the opinion, that there was not a sufficient sample for further analysis. Therefore, subsections (2) and (3) of Tenn. Code Ann. § 40-30-404. Further, without going into the intricate details of the proof, the evidence at trial consisted of a positive identification of the [petitioner] and items used by the assailant [in] the [petitioner's] possession and a confession by the defendant, therefore subsection (1) under Tenn. Code Ann. § 40-30-404 could also not be satisfied. . . .

(Footnotes omitted.)

In our view, the post-conviction court did not err by dismissing the petitioner's request for post-conviction DNA testing. Although there was no evidence introduced at the hearing on the petition, the pro se petitioner has attached supporting documents, including a transcript of the trial testimony of TBI Special Agent Dr. Qadriyyah Pillow, to one of his filings. The documents indicate that the rape kit completed on the victim contained "an oral swab slide[] and optional swabs . . . from the gum line and . . . from after the rinse of the gum line." Dr. Pillow testified that testing revealed the presence of some sperm heads but that after two attempts, she was unable to extract any DNA other than that of the victim. She confirmed that there was simply not a sufficient sample of sperm for an identification comparison and that she knew of no additional testing that would be helpful. There is nothing in the record to contradict the conclusions of Dr. Pillow. Thus, the petitioner could not satisfy subsections (2), that the evidence is still in existence and in such a condition that DNA analysis may be conducted, and (3) that the evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested, of Tennessee Code Annotated section 40-30-304.

Accordingly, the judgment of the post-conviction court is affirmed.

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GARY R. WADE, PRESIDING JUDGE